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In re the Matter of:) Case No.: 08-380
)
State of New Hampshire Banking) Order for Default Judgment
)
Department,)
)
Petitioner,)
)
and)
)
Our Town Mortgage, LLC, and Robert J.)
)
Giuliana,)
)
Respondents,)
)

	<u>Default Judgment</u>
1. <u>What is the issue?</u>	
2. <u>What are the facts?</u>	
3. <u>What is the law?</u>	
4. <u>What are the arguments?</u>	
5. <u>What is the conclusion?</u>	

PROCEDURAL CASE HISTORY

The Bank Commissioner issued an Order to Show Cause with Immediate Suspension and a Cease and Desist Order on or about October 13, 2008, which incorporates the October 13, 2008 Staff Petition issued by New Hampshire Banking Department Hearings Examiner Maryam Torben Desfosses. The Bank Commissioner issued the Notice of Hearing - Order to Show Cause ("Notice of Hearing") against both Respondents on October 13, 2008.

On January 20, 2009, the adjudicative hearing was held before Presiding Officer Jack Thomas ("Presiding Officer Thomas") at the New Hampshire Banking Department ("Department"). Respondent Our Town Mortgage, LLC and Respondent Robert J. Giuliana failed to appear in person or by representative at the January 20, 2009 adjudicative proceeding. Upon request of the Petitioner, Presiding Officer Thomas stayed the proceedings against Respondent Robert J. Giuliana. Presiding Officer Thomas heard testimony and accepted exhibits relevant to the matter as it relates to Respondent Our Town Mortgage, LLC.

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2 **APPLICABLE RULE OF ADJUDICATORY PROCEEDINGS**

3 Failure of a licensee to appear in person or by representative at the
4 adjudicative proceeding shall constitute a default.

5 Further, *Jus 810.02 Failure to Attend Hearing of the CHAPTER Jus 800*
6 *MODEL RULES OF PRACTICE AND PROCEDURE* provides:

7 If any party to whom a notice has been given in accordance
8 with Jus 807.03 fails to attend a hearing, the presiding officer
9 shall declare that party to be in default and shall either:

10 (a) Dismiss the case, if the party with the burden of proof
11 fails to appear; or

12 (b) Hear the testimony and receive the evidence offered by
13 a party, if that party has the burden of proof in the
14 case.

15 **FINAL ORDER**

16 It is hereby ORDERED, that:

17 1. By operation of law, a Default Judgment was entered against Respondent Our
18 Town Mortgage, LLC (hereinafter, "Defaulting Respondent Our Town
19 Mortgage") on January 20, 2009;

20 2. The following allegation as stated in the October 13, 2008 Staff Petition
21 are dismissed:

22 a. RSA 397-A:5, III (c), Failure to post continuous surety bond;

23 b. RSA 397-A:10, III, Failure to inform Bank Commissioner of
24 office closure;

25 c. RSA 397-A:10, IV, Failure to update information on file with
Bank Commissioner;

d. RSA 397-A:10-a, I(a), Failure to properly surrender license;

e. RSA 397-A:11, II, Failure to Provide Requested Files;

f. RSA 397-A:12, III, Failure to provide requested files;
Order for Default Judgment - 2

- 1 g. RSA 397-A:12, VII, Failure to facilitate examination; and
- 2 h. RSA 397-A:13, V, Failure to file additional documents;
- 3 3. Defaulting Respondent Our Town Mortgage violated RSA 397-A:13, I
- 4 one(1) time for failing to file an annual report for period ending
- 5 December 31, 2007. RSA 397-A:13, IV provides:
- 6 "Any mortgage banker or mortgage broker failing to file
- 7 either the annual report or the financial statement required
- 8 by this section within the time prescribed may be required to
- 9 pay to the department a penalty of \$25 for each calendar day
- 10 the annual report or financial statement is overdue up to a
- 11 maximum penalty of \$2,500 per report or statement."
- 12 4. Defaulting Respondent Our Town Mortgage violated RSA 397-A:13, II
- 13 one (1) time by failing to file a financial statement for period ending
- 14 December 31, 2007 with the Department;
- 15 5. Defaulting Respondent Our Town Mortgage violated RSA 397-A:13, VI
- 16 one (1) time for failure of an officer to respond to Department
- 17 inquiries regarding a financial statement;
- 18 6. Defaulting Respondent Our Town Mortgage violated RSA 397-A:10, IV
- 19 on one (1) occasion for failure to update information on file with
- 20 the Commissioner. Correspondence mailed to Defaulting Respondent Our Town
- 21 Mortgage by the Department was returned as undeliverable. Defaulting
- 22 Respondent Our Town Mortgage made changes to the company name, record of
- 23 ownership and location without properly notifying the Department.
- 24 7. Defaulting Respondent Our Town Mortgage violated RSA 397-A:12, V
- 25 one (1) time for failing to pay examination fee;
8. The Department did not meet the burden of proof regarding the following
- allegations and they are therefore dismissed:

1 a. RSA 397-A:16,IV, Unauthorized retention of commissions for services
2 rendered; and

3 b. RSA 397-A:2, II, Mortgage loans brokered do not comply with RSA 293-
4 15.01;

5 9. Defaulting Respondent Our Town Mortgage violated RSA 293-A:15.01 (RSA 397-
6 A:2, III) two (2) times because persons licensed under RSA Chapter 397-A
7 must comply with RSA 293-A:15.01. Business transactions occurred in New
8 Hampshire during the period when Respondent was issued an administrative
9 suspension by the New Hampshire Secretary of State;

10 10. Defaulting Respondent Our Town Mortgage's license is hereby revoked;

11 11. Defaulting Respondent Our Town Mortgage shall immediately pay to the
12 Department an administrative fine of \$2,500 for each aforementioned
13 violation, totaling \$20,000 to be paid within sixty days from the date of
14 this Order, unless an agreement is reached between the New Hampshire
15 Banking Department and Respondents for a later time; and

16 12. Failure to abide by this Order for Default Judgment may result in civil
17 or criminal penalties.

18 SIGNED,

19
20 Dated: 2/19/09

21 /s/
22 PETER C. HILDRETH
23 BANK COMMISSIONER
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